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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THOMAS MARK DEAL,

Plaintiff and Appellant,

v.

PATRICIA KIM DEAL,

Defendant and Respondent.

A105221

**(Alameda County
Super. Ct. No. HG03111057)**

Appellant Thomas Deal filed a civil action for battery and child abduction, among other causes of action, against respondent Patricia Deal during the pendency of their marital dissolution action. The trial court sustained respondent's demurrer, dismissed the complaint, and denied appellant's motion for reconsideration. We affirm.

FACTUAL & PROCEDURAL BACKGROUND

In August 2003, appellant, who represented himself throughout these proceedings, filed a complaint alleging that he and respondent married in 1989, separated in October 2000, and divorced in 2002. They had twins, Keara and Nathan, who were born in 1996. At the time the complaint was filed, the couple's child support obligations and custody rights were still being adjudicated in family court.

The trial court sustained respondent's demurrer on the ground that appellant's complaint failed to state a cognizable cause of action that was not within the jurisdiction of the family court. The court dismissed the complaint. The trial court also denied

appellant's motion for reconsideration because he failed to present any new facts, circumstances or law calling into question the court's ruling. (Code Civ. Proc., § 1008, subd. (a).) Appellant appeals from both the order sustaining the demurrer and the order denying his motion for reconsideration.¹

DISCUSSION

“In reviewing the sufficiency of a complaint against a general demurrer . . . ‘[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . .’ . . . When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Appellant limits his argument on appeal to the dismissal of his claims for child abduction and battery. He alleged in his complaint that respondent abducted the children and concealed their whereabouts from him on three occasions: October 9, 2000, September 26, 2001, and November 18, 2001. He alleged that on August 16, 2000, respondent slapped his arm and shoved him in the chest without provocation.

¹ We reject respondent's argument that appellant's notice of appeal was untimely. On October 17, 2003, the clerk of the court mailed appellant a copy of the order sustaining the demurrer. That order was not entitled a “Notice of Entry” of judgment nor was it file-stamped. Therefore, the mailing of the order did not trigger a 60-day period to appeal under California Rules of Court, rule 2(a)(1). Respondent does not claim that she mailed a notice of entry of judgment or a file-stamped copy of the order to appellant, which would have triggered a 60-day period to appeal under rule 2(a)(2). (Cal. Rules of Court, rule 2(a)(2).) Therefore, the time for filing a notice of appeal was governed by rule 2(a)(3), which required the notice to be filed within 180 days of entry of judgment. (Cal. Rules of Court, rule 2(a)(3).) Appellant filed his notice of appeal well within 180 days of October 17, 2003.

I. *Appellant's Claims for Child Abduction and Battery Did Not Fall Within the Jurisdiction of the Family Court*

The trial court sustained the demurrer in part because it believed several of the claims raised in the complaint were already at issue in the pending family court proceeding.

Tort actions that are “nothing more than reruns of a family law case. . . . should not be allowed to spill over into civil law,” even if characterized as legitimate tort claims. (*Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 25.) Courts must examine the substance of a party’s claims, not just their nominal headings, to determine whether they are matters in family law litigation that have been reframed as civil law actions. (*Ibid.*) If so, a demurrer to the claims should be sustained. (*Id.* at pp. 25-26.)

Spouses can pursue appropriate civil remedies against each other. (*In re Marriage of McNeill* (1984) 160 Cal.App.3d 548, 556; *Sosnick v. Sosnick* (1999) 71 Cal.App.4th 1335, 1339-1340.) Such actions not only may, but must, be filed separately from family court proceedings. (*Sosnick*, at p. 1339; *McNeill*, at p. 556.) The trial court’s jurisdiction in family law cases is limited to issues concerning marital status, custody, child and spousal support, settlement of property rights, and attorney fees and costs. (Fam. Code, § 2010; Cal. Rules of Court, rule 5.104; *Sosnick*, at p. 1339.)

The trial court properly sustained the demurrer as to appellant’s allegations that respondent interfered with his contact with the children and violated family court orders. Such matters are clearly within the jurisdiction of the family court. Appellant’s claims for damages caused by respondent’s abduction of the children and commission of battery, on the other hand, are tort claims that cannot be adjudicated in family court. Although the family court can make child custody orders and issue domestic violence restraining orders, it cannot award damages for personal injuries caused by violations of those orders. Therefore, the demurrer could not be sustained as to those claims on the ground that they fell within the jurisdiction of the family court.

II. *Appellant Has Not Established That He Has a Valid Cause of Action for Child Abduction*

The trial court also held that appellant failed to state a cognizable cause of action that fell outside the jurisdiction of the family court. Appellant argues that under Code of Civil Procedure section 340.15, any act of molesting, harassing or disturbing the peace of a spouse constitutes a tort of domestic violence. He is mistaken. Section 340.15 establishes a statute of limitations; it does not create a cause of action. A separate code section establishes a tort of domestic violence, but appellant does not argue that his child abduction allegations satisfied the elements of that tort. (Civ. Code, § 1708.6.) Nor could he, as the tort requires a showing of bodily injury or reasonable apprehension of imminent serious bodily injury. (*Ibid.*; Pen. Code, § 13700.)

“ ‘In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration.’ ” (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278; see also *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116 [appellate court may deny claim on appeal that is unsupported by argument applying legal principles to the particular facts of the case on appeal].) This requirement applies equally to appellants acting without counsel. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.) Because appellant fails to present argument or authority demonstrating that he pled a valid claim for child abduction, we affirm the trial court order sustaining the demurrer as to the child abduction allegations.

III. *Appellant Has Not Established That He Has a Valid Cause of Action for Battery That Amounts to Domestic Violence*

Appellant argues that he pled a valid cause of action for battery and that the claim is timely because it falls within the definition of domestic violence in Code of Civil Procedure section 340.15. As noted above, section 340.15 establishes a three-year limitations period for “any civil action for recovery of damages suffered as a result of domestic violence.” (Code Civ. Proc., § 340.15, subd. (a).) If appellant’s battery claim does not fall under section 340.15, it is governed by the former one-year statute of

limitations because the alleged battery occurred in August 2000 and thus is untimely. (Code Civ. Proc., § 340, former subd. (3), amended and replaced in pertinent part by Code Civ. Proc., § 335.1, added by Stats. 2002, ch. 448.)

As used in Code of Civil Procedure section 340.15, “ ‘domestic violence’ has the same meaning as defined in Section 6211 of the Family Code.” (Code Civ. Proc., § 340.15, subd. (b).) In turn, Family Code section 6211 defines “domestic violence,” as relevant here, as “*abuse* perpetrated against . . . [a] spouse or former spouse.” (Fam. Code, § 6211, subd. (a), emphasis added.) “Abuse” is defined as any of the following: “(a) Intentionally or recklessly to cause or attempt to cause bodily injury. (b) Sexual assault. (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.” (Fam. Code, § 6203.) Section 6320 permits a court to enjoin a party from “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.” (Fam. Code, § 6320.) The court may enjoin such conduct, however, only if the petitioner satisfies the traditional prohibitory injunction requirement of showing a threat of future irreparable harm. (Cf. *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 327 [construing Code Civ. Proc. § 527.8, which authorizes injunctions against the harassment of employees, to include traditional prohibitory injunction requirement that applicants show a threat of great or irreparable harm].) Under Family Code section 6203, subdivision (d), abuse is conduct listed in Family Code section 6320 that raises a credible threat of future irreparable harm.

Appellant’s allegation of battery does not meet any of the statutory definitions of abuse. He does not allege that respondent caused or attempted to cause him bodily injury, sexually assaulted him, or placed him in reasonable apprehension of imminent serious bodily injury. He alleges no facts that would support an inference that the alleged

battery instilled in him a credible fear that respondent would batter him again in the future. He does not, for example, allege that she threatened him with future harm, that the alleged battery was part of a pattern of escalating aggression, or even that all of her actions were aggressive rather than defensive. Nor does appellant argue that he could amend his complaint to allege such facts. Because appellant has not established that he can state a cognizable claim for battery that amounts to domestic violence within the meaning of Code of Civil Procedure section 340.15, we affirm the trial court order sustaining the demurrer as to this claim.

DISPOSITION

The judgment and order of the trial court are affirmed.

GEMELLO, J.

We concur.

JONES, P.J.

STEVENS, J.